



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,873	08/23/2001	Thomas Lemmons	577172000700	9453

43997 7590 04/13/2006

OPTV/MOFO
C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

EXAMINER

CHOWDHURY, SUMAIYA A

ART UNIT	PAPER NUMBER
----------	--------------

2623

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/935,873	Applicant(s) LEMMONS, THOMAS	
	Examiner Sumaiya A. Chowdhury	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12-17-01, 10-23-02, 5/27/04</u> | 6) <input type="checkbox"/> Other: ____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4-6, and 8, are rejected under 35 U.S.C. 102(e) as being anticipated by Rodriguez (2005/0071882).

As for claim 1, Rodriguez discloses a method of managing television network bandwidth comprising:

broadcasting a plurality of programs on a plurality of channels to a plurality of receivers (DHCT 14) across said network; - [0035]

identifying each channel of said plurality of channels to which at least one receiver of said plurality of receivers connected to said network is tuned; - (The network manager controls the distribution of media and data from the headend to each DHCT. Hence, the channel to which the receiver is tuned to is identified by the network manager. -[0051])

determining if at least one channel of said plurality of channels is not tuned by any one of said plurality of receivers; - (The bandwidth allocation manager determines if any of the channels are not tuned to by subscribers. - [0060])

if at least one channel of said plurality of channels is not tuned by any one of said plurality of receivers, halting transmission of a program on said at least one channel and broadcasting information other than a program on said at least one channel. – (When the bandwidth allocation manager determines that a channel is not tuned to by any subscribers, it halts transmission of broadcast data and media on that particular channel and uses the channel to set up a VoD session. Subsequently, if a subscriber selects the broadcast for that particular channel, the bandwidth allocation manager “recaptures” the bandwidth and allocates it to fulfill the subscriber request. - [0060])

As for claims 2 and 6, Rodriguez discloses wherein said step of identifying further comprises:

receiving a signal from each receiver of said plurality of receivers, said signal indicating the channel tuned. – (The network manager provides control and communication functionality by monitoring the channels selected by the DHCT and communicated the selected channel to the headend. - [0051])

As for claim 4, Rodriguez discloses wherein said step of identifying further comprises:

receiving a signal from each receiver of said plurality of receivers, said signal indicating the channel tuned if a user has selected a receiver function discontinuing reception of any channel (When the user changes the channel, the DHCT informs the headend of the newly selected channel – [0051]).

As for claim 5, Rodriguez discloses a method for managing network bandwidth comprising:

broadcasting a plurality of programs on a plurality of channels to a plurality of receivers across said network – [0035];

defining a group of channels (60, 64, 68, 72 – Fig. 2) comprising a subset of said plurality of channels – [0027], [0029];

identifying each channel of said group of channels to which at least one receiver of said plurality of receivers connected to said network is tuned – [0051];

determining if at least one channel of said group of channels is not tuned by any one of said plurality of receivers – [0060];

halting transmission of a program on said at least one channel and broadcasting information other than a program on said at least one channel if at least one channel of said group of channels is not tuned by any one of said plurality of receivers – [0060].

As for claim 8, Rodriguez discloses wherein said step of identifying further comprises:

receiving a signal from each receiver of said plurality of receivers, said signal indicating the channel tuned if a user has selected a receiver function discontinuing reception of any channel – (When the user discontinues watching TV, a signal is sent to the headend/server indicating that a session has expired and to stop distributing content of the particular channel the user was tuned to. – [0059]).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Aras (5872588).

As for claims 3 and 7, Rodriguez fails to disclose wherein said step of identifying further comprises:

receiving a signal from each receiver of said plurality of receivers, said signal indicating the channel tuned and the previous channel tuned.

In an analogous art, Aras discloses that the receivers transmit the Behavior Collection Table which indicates the channels tuned to by the user (channel tuned and previous channel tuned) to the Behavior Collection Center – col. 12, lines 40-45, col. 13, lines 24-28.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Rodriguez's invention to include that the receivers transmit the Behavior Collection Table which indicates the channels tuned to by the user to the Behavior Collection Center, as taught by Aras, for the advantage of statistical analysis.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sumaiya A. Chowdhury whose telephone number is (571) 272-8567. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SAC


CHRISTOPHER GRANT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600